28/01/2020

39

HIGH COURT OF CHHATTISGARH AT BILASPUR

Single Bench : Hon'ble Shri H.L. Dattu, C.J.

Writ Petition No.2660 of 2002

Petitioner		State of Chhattisgarh through the Executive Engineer, Building & Road Public Works Department, Post – Khairagarh, District Rajnandgaon, Chhattisgarh
	Vs.	
Respondents	1.	Sarjuram @ Dwarka S/o. Gopalram, Chandel Village Jhuranadi, Post Shakha Via-Chhuikhadan, Distt. Rajnandgaon, Chhattisgarh
	2.	Presiding Officer Labour Court District Rajnandgaon, Chhattisgarh

Present: Shri Sumesh Bajaj, Government Advocate for the petitioner/State.
Shri Pankaj Agrawal, counsel for respondent No.1.

ORAL ORDER
(Passed on 19th March, 2007)

The State of Chhattisgarh is the petitioner in this writ petition filed under Articles 226/227 of the Constitution of India. It calls in question the legality or otherwise of the award passed by the Labour Court in Case No.9/I.D.Act Refernce/2001 dated 8-12-2001.

(2) The Labour Court, by its impugned award dated 8-12-2001, has allowed the claim petition filed by the first respondent and has directed the petitioner/State to reinstate the first respondent in the service with 50% back wages from the date of oral termination till the date of reinstatement.

(3) The first respondent was initially working as daily wager employee with the petitioner/State. It appears that he met with an accident. The petitioner/State, taking a sympathetic view, had continued the services of the first respondent as a Chowkidar for a period from 14-10-1995 to 1-2-2000.

Thereafter, the petitioner/State has orally terminated the services of the first respondent.

(4) Being aggrieved by this action of the petitioner/State, the first respondent had raised a dispute before the Labour Court, Rajnandgaon (Chhattisgarh). The claim petition filed by the first respondent was registered by the Labour Court in Case No.9/I.D.Act Refernce/2001.

(5) The respondent in the claim petition, who is an Executive Engineer, Public Works Department, had filed his counter and it was his case that the claimant, i.e., the first respondent herein was employed under a scheme known as Jawahar Rojgar Yojana and after the said scheme came to an end, the services of the claimant was also put to an end by the respondent, i.e., the petitioner herein/employer. In support of his claim, the respondent – Executive Engineer, in the dispute, had examined himself as D.W.-1, but quite curiously has not produced any document in support of his statement.

(6) The Labour Court, keeping in view the factual aspects of the matter and not accepting the defence filed by the respondent – Executive Engineer, has passed the impugned award. It is the correctness or otherwise of the said award is called in question by the petitioner under Article 227 of the Constitution of India.

(7) Learned Government Advocate appearing for the petitioner/State would submit that the Labour Court could not have shifted the onus of proving that the first respondent herein was employed under a scheme known as Jawahar Rojgar Yojana and after expiry of the said scheme, the services of the first respondent was orally terminated. Therefore, the learned Government Advocate submits that the reasoning and the conclusion reached by the Labour Court is arbitrary, illegal and unjustified and, therefore, requests to set aside the said award. Learned counsel appearing for the first respondent ably justifies the impugned award.

(8) It was the case of the first respondent herein that he was regularly employed by the petitioner/State. After he met with an accident, he was orally terminated from the service under the Jawahar Rojgar Yojana and thereafter he was asked to work as Chowkidar in a Rest House from 14-10-1995 to 1-2-2000 and he was regularly employed by the petitioner. The petitioner herein in the defence filed before the Labour Court had pleaded that the first respondent was employed under a scheme and after expiry of the said scheme, the services of the first respondent was discontinued.

(9) Having pleaded the said defence, it was for the petitioner to have substantiated the same. Further, it is for the petitioner, who would be having all the records with them, to have discharged the burden and that burden cannot be shifted on the first respondent who is a poor workman. In my opinion, the Labour Court was justified in coming to the conclusion that the petitioner/State has failed to discharge its burden and, therefore, the first respondent is entitled to the relief sought for in the claim petition.

(10) The reasoning and the conclusion reached by the Labour Court, in my opinion, is neither arbitrary nor illegal and does not call for any interference by this Court. Accordingly, the writ petition requires to be rejected and it is rejected. Ordered accordingly.

Sd/-
Chief Justice